IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE KURIAN JOSEPH
&
THE HONOURABLE MR. JUSTICE T.R. RAMACHANDRAN NAIR

WEDNESDAY, THE 20TH JUNE 2007 / 30TH JYAISHTA 1929

FAO. No. 57 of 2007

AGAINST THE ORDER DATED 04/12/2006 IN IA.158/2006 IN OS.457/2001 of SUB COURT, PALAKKAD
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APPELLANT/PETITIONER/5TH DEFENDANT:

PADMAVATHY AMMA, D/O. KARTHIYAYANI AMMA, AGED 79 YEARS, ABILASH, ELAPULLY, PALAKKAD TALUK, PALAKKAD DISTRICT.

BY ADV. SRI. RAJESH SIVARAMANKUTTY

RESPONDENTS/RESPONDENTS/PLAINTIFF/DEFENDANTS 2 TO4:
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1. **THE FEDERAL BANK LTD, REGISTERED OFFICE ALWAYE, REP.THROUGH ITS MANAGER, MATHUR BRANCH, ALATHUR TALUK, PALAKKAD DISTRICT.**
2. **M/S. A.S. ASSOCIATES, 22/161, SIVANKOIL, EXTENSION NURANI, PALAKKAD DIST.**
3. **SESHAN, S/O.RAMACHANDRAN, AGED 46 YEARS, MANAGING PARTNER, M/S.A.S.ASSOCIATES,22/161, SIVANKOIL, EXTENSION NURANI,PALAKKAD DISTRICT.**
4. **RAMACHANDRAN, S/O. LATE CHAMI AYYAR, AGED 80 YEARS, MANAGING PARTNER, M/S. A.S.ASSOCIATES, 22/161, SIVANKOIL, EXTENSION NURANI, PALAKKAD DIST.**
5. **SURAJ SESHAN, S/O.SESHAN, AGED 16 YEARS (MINOR),MANAGING PARTNER, M/S.A.S.ASSOCIATES, 22/161,SIVANKOIL,EXTENSION NURANI,PALAKKAD DIST. REP.BY GUARDIAN FATHER SESHAN, S/O.RAMACHANDRAN, AGED 46 YEARS, MANAGING PARTNER, M/S.A.S.ASSOCIATES 22/161, SIVANKOIL,EXTENSION NURANI,PALAKKAD DIST.**

(R2 to R5 DELETED AS PER ORDER IN I.A. NO. 2064/2007 DATED 20.06.2007).

BY ADV. SRI.GEORGE VARGHESE (MANACHIRACKEL) for R1.

THIS FIRST APPEAL FROM ORDERS HAVING BEEN FINALLY HEARD ON 20/06/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

KURIAN JOSEPH & T.R. RAMACHANDRAN NAIR, JJ.

F.A.O. No. 57 OF 2007

Dated this the 20th day of June, 2007.

J U D G M E N T

Ramachandran Nair, J.

This is an appeal filed by the 5th defendant in a suit. It was a suit filed by the first respondent-Bank for realization of money. The suit was decreed ex parte and the petition filed under Order IX Rule 13 of Code of Civil Procedure was also rejected. Aggrieved by the same, this appeal is filed.

2. It is pointed out by the counsel for the appellant that PW1 was cross examined by the appellant and the case was thereafter adjourned for the evidence of the defendants. It is also pointed out that the appellant is an old lady and she had been effectively contesting the suit, and she could not appear on that day as she was suffering from severe state of osteoporosis.

3. The court below has rejected the petition filed under Order IX Rule 13 of C.P.C on finding that no evidence was adduced in support of the application.

4. We heard parties. In the light of the fact that the appellant alone has contested the suit and as she had been prosecuting the matter with due diligence, a further opportunity will be given to the appellant to adduce evidence on her behalf.

Hence, I.A. No. 158/2006 is allowed and the ex parte decree in O.S. No. 457/2001 is set aside. The parties will appear before the court below on 16.07.2007. Court below will dispose of the matter as expeditiously as possible and at any rate within a period of three months from today.

KURIAN JOSEPH
JUDGE

T.R. RAMACHANDRAN NAIR
JUDGE

smp